



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF SCIENCE AND TECHNOLOGY POLICY  
WASHINGTON, D.C. 20502

October 3, 2019

Sai  
President, Fiat Fiendum, Inc.  
MuckRock News  
DEPT MR 80667  
411A Highland Ave  
Somerville, MA 02144-2516  
80667-57623805@requests.muckrock.com

**Re: OSTP-FOIA-19-081**

Dear Mr. Sai:

This letter acknowledges a Freedom of Information Act (hereinafter “FOIA”)<sup>1</sup> request received by the Office of Science and Technology Policy (henceforth “OSTP”) on September 20, 2019. Given that the records sought in the request are numerous and interspersed throughout the body of the text, for purposes of clarity and brevity OSTP has simply provided a summary of the request—in conjunction with OSTP’s concerns regarding its processing—below. For the reasons explained herein, OSTP cannot currently process this FOIA request, and cannot accommodate your demand to use your specified workflow in processing this FOIA request. Furthermore, some parts of this request are not perfected at this time.

**Part (C)**

OSTP has multiple concerns regarding this portion of the request, which you will find outlined in (1) through (4) immediately below. Part C was described very generically so I ask that you provide more information. Please let me know the times and dates to the best of your ability of when you submitted the following. Please also include the nature of these submissions to better assist us with the search for responsive records.

(1) Please note that OSTP is a small agency with limited resources. If Part (C) includes mere boilerplate language and does not describe records that are actually of interest to you, please notify OSTP so that it may more efficiently manage its resources. If, however, these records are truly of interest to you, please see (2) through (4).

(2) Because the information provided in Parts (C)(1) and (C)(3) was extremely generic, OSTP requests that you provide more information regarding the records you seek to assist it in adequately responding to these portions of your request. Please, to the best of your ability, provide any tracking numbers that OSTP supplied you in acknowledging or responding to the

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<sup>1</sup> 5 U.S.C. § 552 (2016).



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following. Alternatively, you may provide OSTP with the approximate dates and times in which you submitted the following, as well as the nature of the submissions:

- (a) Complaints;
- (b) FOIA requests;
- (c) Appeals;
- (d) Privacy Act requests; and
- (e) Privacy Act appeals.

(3) Further clarification is needed as to the types of identifying information OSTP should use in its search for Part (C)(2) of your request. Please specify which identifying information listed below your signature, other than your name and position, is actually personal to you and should be used in tailoring the scope of this request, as the MuckRock-generated e-mail address and additional MuckRock company information will not assist in this effort.

The remainder of this request is not “reasonably described” per the FOIA and associated OSTP regulations and therefore cannot be processed at this time. The FOIA sets forth two requirements for a valid request: (1) that the request “reasonably describe” the records it seeks, and (2) that it be “made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed” by the agency to which the request is submitted.<sup>2</sup> OSTP’s regulations, in defining a valid request, state that a perfected request—i.e., one that can be processed—must “describe the records sought in sufficient detail to enable OSTP personnel to locate the records with a reasonable amount of effort.”<sup>3</sup>

As a general comment, the program-oriented language used throughout the request, as well as the fact that multiple sub-requests were made in disparate sections throughout the entirety of the thirteen-page request, made this request extremely difficult to read and understand. Please note that most e-discovery search engines—including the one OSTP uses to conduct its searches—use and respond to only flat Boolean logic expressions. Thus, in order for OSTP to process your request, OSTP officials or employees conducting the search would need to translate the program-oriented description the request provides into appropriate Boolean terms, which will likely not accurately convey the scope of what you seek. To assist OSTP in its responsive effort, please consolidate all portions of your request describing the records sought and articulate the records requested in such a way as to allow a human to translate the language into adequate Boolean terms. Alternatively, you may provide your own Boolean search expression to encompass the entirety of your request.

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<sup>2</sup> *Id.*

<sup>3</sup> 32 C.F.R. § 2402.4(b) (2013).



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Further, please note that the FOIA permits requesters to seek and receive only copies of *existing records* on file with Federal agencies.<sup>4</sup> The FOIA does not require Federal agencies to create or store *new records* for the purposes of responding to FOIA requests.<sup>5</sup>

**Part (A)**

Despite the disclaimer stating that the instant request does not require OSTP to generate new records, the practical effect of all of Parts (A)(1) and (A)(2)(a) is to require OSTP to generate new records. Even if these portions of the request were reasonably translatable into Boolean search terms, requiring OSTP to generate “lists” of the items identified—which are likely not organized as lists in a centralized location—and tack on the specifications requested will most likely require the production of new records. The request even implicitly acknowledges and contemplates that OSTP will have to produce new records by, for example, noting that it should provide in one record “the identity and privileges of you [sic] group itself; and as a separate responsive record, specify the membership, access privileges, etc [sic] of the group.” Because OSTP is not required to generate new records in response to FOIA requests, these portions of the request, as they currently stand, do not reasonably describe records in existence at the time of the request. The terms of the request must be modified so as to allow OSTP to respond adequately without generating new records.

With respect to Part (A)(2)(b), OSTP is currently unable to translate the request into an appropriate flat Boolean logic expression. Please articulate the terms of the request in a manner allowing for such translation.

**Part (B)**

OSTP will perform a search of its records to determine if the documents requested in this portion of the request are currently available. If such records are available, OSTP would make them available consistent with the FOIA.

**Part (D)**

Part (D) of the request appears to expand upon the documents requested in Parts (A) through (C) to the extent that those portions of the request did not cover all possible record sources and formats. OSTP’s concerns with this portion of the request are outlined in (1) through (3) immediately below.

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<sup>4</sup> See Frank v. U.S. Dep’t of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996) (citing Church of Scientology v. U.S. Internal Revenue Serv., 792 F.2d 146, 150-51 (D.C. Cir. 1987) (“FOIA provides access to existing records but does not establish a research service. FOIA entitles citizens to the disclosure of documents, but it does not oblige the government to answer their questions.”))

<sup>5</sup> See Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 152 (1980) (holding that the FOIA “does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained”).



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(1) The portion of Part (D) extending from “For all responsive records” to “any declassified records” essentially operates as a programming “for” structure. In order to conduct an adequate search, OSTP would need to translate this structure into a flat Boolean logic expression after combining Part (D) with each of Parts (A) through (C). To assist OSTP in this effort, please rephrase this portion of the request in a way that allows translation into Boolean terms that would encompass the scope of the records you seek.

(2) Those lines pertaining to “all parts of the record” operate as a series of “if” statements that seem to be directed at a relational database manager. OSTP, like most other Federal agencies, uses e-discovery software to search for records as opposed to sending direct queries into a relational database. Accordingly, OSTP asks that you please rephrase this portion of the request into appropriate Boolean search terms.

(3) Those lines regarding the scope of “related database records” use exceedingly technical terms—such as “recursively,” “foreign key,” and “schema”—that pertain to relational database searches and cannot currently be translated into a flat Boolean logic expression. OSTP asks that you please rephrase this portion of the request into appropriate Boolean search terms.

### **Processing Workflow**

The request demands that OSTP follow a specific processing workflow and sequence. Agencies are not obliged to use a requester’s specified workflow, especially when such workflow will obstruct the agencies’ ability to comply with statutory deadlines. The request’s demand would generate workflow dependencies that the FOIA and associated Federal agency regulations—including OSTP’s regulations—do not contemplate. You are more than welcome to bifurcate and submit separate FOIA requests at different times if you would like future requests to be processed in a particular order.

### **Rehabilitation Act Accommodations**

The request seeks accommodations under the Rehabilitation Act.<sup>6</sup> Please provide documentation evidencing your disability. Acceptable forms of documentation include statements or letters on stationery with a physician’s or other medical professional’s letterhead; statements, records, or letters from a Federal agency issuing or providing disability benefits; statements, records, or letters from a State vocational rehabilitation agency counselor; and certification from a private vocational rehabilitation or other counselor issuing or providing disability benefits.

### **Multitrack Processing**

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<sup>6</sup> 29 U.S.C. § 794d (2000).



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In accordance with the FOIA, OSTP uses a multitrack processing system when reviewing FOIA requests.<sup>7</sup> Requests within each track are processed on a “first-in, first-out” basis.<sup>8</sup> Track one is for “requests of simple to moderate complexity that are expected to be completed within 20 working days.”<sup>9</sup> Track two “is for requests involving ‘unusual circumstances,’ . . . that are expected to take more than 20 working days to complete.”<sup>10</sup> Requests that seek and receive expedited processing are prioritized above each of the aforementioned tracks, and “OSTP may take [such] requests out of order” to process them more quickly.<sup>11</sup> To qualify for expedited processing, one of the following compelling needs must be met:

- 1) “That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or”
- 2) “That a request is made by a person primarily engaged in disseminating information, and the person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.”<sup>12</sup>

Adjudications regarding processing times will occur if and when such processing is necessary. At this time, portions of this request have not been perfected, OSTP will process the portions that are currently perfected.

#### Fees

The request seeks waivers of fees under the applicable search fee exemptions for members of the news media and those seeking records under the Privacy Act.<sup>13</sup> In order to verify your identity and evaluate this request, please provide a signed copy of this request on organizational letterhead. For your convenience, you may simply e-mail this copy to [OSTPFOIA@ostp.eop.gov](mailto:OSTPFOIA@ostp.eop.gov) in a PDF file. Adjudications for fee waivers will occur if and when fees become applicable—that is, when the request (or one or more of its Parts) has been processed.

Please note that requesters have the right to seek dispute resolution services regarding their requests from OSTP’s FOIA Public Liaison or the Office of Government Information Services (OGIS). To employ these services, please contact Nick Wittenberg via telephone at (202) 456-1985 or via e-mail at [OSTPFOIA@ostp.eop.gov](mailto:OSTPFOIA@ostp.eop.gov). To contact OGIS, please use the following contact information:

<sup>7</sup> 5 U.S.C. § 552(a)(6)(D) (2016); 32 C.F.R. § 2402.5(c) (2013).

<sup>8</sup> 32 C.F.R. § 2402.5(c) (2013).

<sup>9</sup> *Id.* § 2402.5(c)(1).

<sup>10</sup> *Id.* § 2402.5(c)(2).

<sup>11</sup> *Id.* § 2402.5(d).

<sup>12</sup> *Id.* § 2402.5(d)(1)(i)-(ii).

<sup>13</sup> *Id.* § 2402.8(b)(1)(ii), (iv).



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If you have any questions, please do not hesitate to contact me via telephone or e-mail.

Sincerely,

Nicholas D. Wittenberg  
Legal Counsel